IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

RSA.No.123 of 2007.

Date of Decision :10th September, 2007.

Gurdas and others. …Appellants.

Versus:

Dimple Kumar and another. …Respondents.

Coram:
The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the appellants: Mr.G.R.Palsra, Advocate.

For Respondents. Mr.J.L.Bhardwaj, Advocate.

Sanjay Karol, J (Oral).

The appellant herein has assailed the judgment and decree dated 21st February, 2007 passed by the District Judge, Mandi in Civil Appeal No.125 of 2006. With the consent of the learned counsel for the parties, the appeal is taken on board for hearing.

The substantial question of law which needs to be considered in the present appeal as to whether in a suit for prohibitory and mandatory injunction in the absence of any specific prayer for recovery of possession, the court below could have passed the decree for possession of the land in question.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

The appellants are the defendants and the respondents are the plaintiffs and are referred to as such.

The plaintiffs claiming themselves to be owners in possession of the suit property filed a suit for prohibitory and mandatory injunction against the defendants. The suit of the plaintiffs (civil Suit No.57 of 2005 titled as Dimple Kumar and another Vs. Gurdas and others), after trial, was dismissed by Civil Judge (Sr. Division) Mandi in terms of judgment and decree dated 31st August, 2006.

Aggrieved by the same, the plaintiffs preferred an appeal. The first appellate Court vide its judgment and decree dated 21st February, 2007 came to the conclusion that no injunction could have been passed against the rightful owner and that the plaintiffs were in possession of the suit property. This fact, however, is disputed by the learned counsel for the defendants and no appeal has been filed by the defendants.. Be that as it may be when the court came to the conclusion that the plaintiffs were in possession of the suit property, no decree for possession could have been passed in favour of the plaintiffs and against the defendants.

In the suit the following prayer was made:

> "It is , therefore, respectfully prayed that keeping in ivew the reasons and circumstances enumerated above, the suit of the plaintiffs may kindly be decreed with costs in favour of the plaintiffs and against the

> defendants; and the defendants may kindly be restrained through permanent prohibitory injunction not to raise any construction in any manner on the land of the plaintiffs and also not to change the nature of the suit land. And in case the defendants succeed in raising the construction over the suit land during the pendency of the suit in that event the structure so raised over the suit land, the said construction be removed by passing the mandatory injunction in favour of the plaintiffs and against the defendants."

The appeal was decided by passing the following order:

> "As a sequel to my findings on point No.1 above, the judgment and decree of the learned trial Judge is set aside and a decree for possession of the vacant land comprised is khasra No.87/1 measuring 0-3-2 bighas situated in Muhal Kehar/290, 1llaqa Rajgarh, Tehsil Sadar, District Mandi, H.P. is passed in favour of the plaintiffs against the defendants with costs. Decree sheet be prepared. Record of the trial court be returned along with copy of this judgment and file after completion be consigned to record room."

The court below has proceeded on the assumption that the suit is for possession. If the plaintiffs were in possession of the same, where was the need to have passed a decree for possession? There was no prayer for a decree of possession. In fact the suit was not formed as such. In the absence of any substantive prayer no decree could have been passed. The question of law is answered accordingly.

There is no finding at all with regard to any un-authorized construction allegedly being carried out by the defendants on the suit property.

In view of the fact that there is no adjudication by the court below on the aforesaid issue which needs to be adjudicated the matter is remanded back to the court below for consideration again. The judgment and decree dated 21st February, 2007 passed by the District Judge, Mandi, is set aside. It is directed that after hearing the parties, the appeal be decided as expeditiously as possible and preferably within a period of four months.

The parties through their learned counsel are directed to appear before the District Judge, Mandi on 25th September, 2007. The records of the courts below be sent back immediately.

(Sanjay Karol),
Judge.

September 10, 2007(R)